MULTIMEDIA UNIVERSITY

STUDENT ID NO

MULTIMEDIA UNIVERSITY

FINAL EXAMINATION

TRIMESTER 1, 2016/2017 SESSION

UCV4612 – CIVIL PROCEDURE I

(All Sections / Groups)

12 OCTOBER 2016
Reading Time: 09:00 AM-09:15 AM
(15 Minutes)
Answering Time: 09:15 AM-12:15 NOON
(3 Hours)

INSTRUCTIONS TO STUDENT

1. Students will have **fifteen minutes** during which they may read the paper and make rough notes ONLY in their question paper. Students then have the remaining **THREE HOURS** in which to answer the questions.

2. This Question paper consists of 4 pages with 5 Questions only.

3. Attempt **FOUR** out of FIVE questions. All questions carry equal marks and the distribution of the marks for each question is given.

4. Students are allowed to bring into Examination Hall CLEAN and ORIGINAL copy of the Rules of Court 2012. Students are not allowed to lend or borrow statute(s) during the Examination.

5. Please write all your answers in the Answer Booklet provided.

QUESTION 1

On 13 March 2016, Labu went to Messrs. Jamil, Latif & Associates at Seremban and agreed to appoint Mr Jamil as his counsel. Labu informed Mr Jamil that he and his father had been involved in an accident on 12 November 2015 at about 2.30 pm while riding a motorcycle No. MBT 4844 at Jalan Port Dickson, Port Dickson. Labu was 16 years old at the time of the accident. The motorcycle was knocked from behind by an army truck. As a result, Labu who was the pillion, fell off from the motorcycle and was injured. His father, Mr Kundur lost the control of the motorcycle, skidded and hit a lamp post. His father suffered serious head injuries and died two days after the accident. Meanwhile, Labu was hospitalized for a month due to broken ribs and a broken left leg. After his discharge, he went to live with his aunt in Seremban.

Labu now wishes to take action against the army for the accident. After instructing Mr Jamil on what had happened, Mr Jamil has not, to date, file any cause paper in the Court. Following that, Labu has contacted Mr Jamil and has been informed that he has no locus standi to file in a suit as he is still a minor.

Labu is curious and comes to you for further advice.

Discuss the following:-

(a) Whether he has a cause of action against the army and the limitation of time for his action.

(8 marks)

(b) Whether he may claim for his personal injuries and the death of his father.

(10 marks)

(c) Which court shall have the jurisdiction to hear and determine his matter.

(2 marks)

(d) The appropriate mode of originating process should Mr Jamil file an action in the court.

(5 marks)

(Total: 25 Marks)

Continued...

QUESTION 2

ANSWER BOTH PARTS OF THIS QUESTION

a) The plaintiff commenced this action against the defendant, claiming money due under a loan agreement. The writ was issued on 16 May 2016 and within ten days of the issuance of the writ, the plaintiff's advocates attempted to effect service of the writ on the defendant by sending the same by registered post to the last known address of the defendant as provided in the loan agreement. The letter was returned with the reason 'sudah pindah/left'. The plaintiff's advocates conducted a search with the National Registration Department and it was revealed that the defendant has a different address and as such the plaintiff served the writ to the new address by registered post. It was again returned with the same reason. The plaintiff then filed an ex parte application to extend the writ for six months from the date of its expiry and for an order of substituted service. The court allowed the application. The plaintiff then served the writ by substituted service on the defendant. The defendant sought to set aside the orders on the grounds that the plaintiff was aware of its registered address and there was no necessity for substituted service and the plaintiff had failed to make full and frank disclosure in its ex parte application to extend the validity and for substituted service and there was insufficient grounds to warrant an extension of the writ.

Discuss on the issues above.

(20 marks)

b) "Even if it can be said (and I shall explain shortly why it cannot) that this is to be understood, there is specified no time limit for him to perform this act. In an action commenced by writ, the time within which the several pleadings must be delivered is expressly provided for in O 18. But where an order for conversion is made by a judge under O 28 r 8(1), the provisions of O 18 are not automatically attracted. A judge when acting under O 28 r 8(1) must give specific directions about the future conduct of the action. He may, as was done in this case, order the delivery of formal pleadings; or he may direct that the affidavits filed do stand as pleadings (although this should be avoided as affidavits cannot be amended nor particulars be asked upon them); or he may direct the filing of only points of claim and defence and require the filing of issues, and he may in appropriate cases dispense with discovery. But, whatever directions a judge may give, they must be clear and designed to regulate the future conduct of the action and to ensure its speedy disposal."

(Per Gopal Sri Ram JCA in *Cheow Chew Khoon (T/A Cathay Hotel) v Abdul Johari bin Abdul Rahman* [1995] 1 MLJ 457).
Discuss.

(5 marks)
Total: 25 Marks
Continued...

QUESTION 3

Discuss the following in a separate and distinct situation:-

a) The writ and statement of claim was served on the defendant personally on 29 June 2016. Having failed to enter an appearance, a judgment in default of appearance was entered against the defendant on 29 July 2016. The judgment was then served on the defendant by prepaid registered post on 29 September 2016. The defendant applied under O 42 r 13 of the Rules of the Court 2012 to set aside the judgment. The defendant contended that the writ and statement of claim had not been properly served on her as the cause papers should have been served on her former lawyers. The defendant claimed that the plaintiff lawyers had known of the dispute between the parties much earlier before the filing of the writ and there were letters passing between the defendant's former lawyers and the plaintiff's lawyers. As such the plaintiff's lawyers knew or ought to have known that the defendant was represented by the defendant's previous lawyers, and therefore all cause papers should have been served on the defendant's former lawyers. The defendant also contended that the plaintiff has breach Rule 56 of Legal Profession (Practice and Etiquette) Rules, 1978. The defendant argued that since there was proper service of the writ and statement of claim, the judgment was an irregular judgment and ought to be set aside *ex debitio*.

Advise the Plaintiff on the following:-

(i) Whether the judgment in default granted by the court is valid.

(9 marks)

(ii) Whether the judgment may be set aside *ex debitio.*

(9 marks)

(iii) The procedure to set aside the judgment in default.

(3 marks)

(b) Ahmad Albab is being sued by Bank Bungasangattinggi for default of payment under a Hire Purchase Agreement. He has received the writ two days ago. He has yet to file in an appearance.

Advise Ahmad Albab on how to enter an appearance to the said writ.

(4 marks)

(Total: 25 Marks)

Continued...

QUESTION 4

Ajis has commenced an action against Ramlee for breach of contract in the Sessions Court at Seremban. The writ and statement of claim were personally served on Ramlee a week ago. Ajis believes that Ramlee has no defence to the action.

As counsel for Ajis, advise Ajis on the following:-

(a) Whether Ajis may apply for an order to speedily and expeditiously dispose off the action against Ramlee.

(3 marks)

(b) What are the requirements in order to meet up with the said application.

(10 marks)

(c) Whether there are issues that can be raised by Ramlee should he wish to oppose the application.

(8 marks)

(d) Whether Ramlee may raise issue on counterclaim as he has no defence.

(4 marks)

(Total: 25 Marks)

QUESTION 5

Write short notes on the following:-

(a) Third party proceedings. (5 marks)

(b) Cause of action. (5 marks)

(c) *Locus standi.* (5 marks)

(d) Mis-joinder of parties. (5 marks)

(e) Intervener. (5 marks)

(Total: 25 Marks)

End of Page